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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Data Based Decisions, Inc.--Claim for Costs

File: B-232663.3

Date: December 11, 1989

DIGEST

1. Attorneys' fees claimed by prevailing protester are allowable where hours are adequately documented and the rates and hours claimed are shown to be reasonable.
2. Attorneys' fees need not be allocated between sustained and denied protest issues where all of the issues raised by the protester were related to the same core protest allegation which was sustained, and there were no distinct and severable grounds of protest on which the protester did not prevail.
3. Successful protester is entitled to recover company costs incurred in pursuing protest to the extent that such costs are sufficiently documented and are reasonable.
4. Claim for proposal preparation costs is disallowed where claimant was not awarded proposal preparation costs in the protest decision and did not timely request reconsideration of the costs awarded.

DECISION

Data Based Decisions, Inc., requests that our Office determine the amount it is entitled to recover from the Department of the Navy for proposal preparation costs under request for proposals (RFP) No. N00123-88-R-5755, and for the costs of filing and pursuing its protest in Data Based Decisions, Inc., B-232663; B-232663.2, Jan. 26, 1989, 89-1 CPD ¶ 87. We determine, as discussed below, that Data Based is entitled to recover \$60,350.45 for its costs of filing and pursuing its protest.

Data Based protested the solicitation and the award of a contract to Integrated Systems Analysts, Inc. (ISA), under the RFP for maintenance and operation of a system which enables the Navy to review the maintenance status of various

ships and coordinate the repair of ships when in port. Data Based argued that the Navy had, in effect, made a sole source award to ISA, that the solicitation improperly favored ISA, and that ISA should not have been allowed to compete because of an organizational conflict of interest. We sustained Data Based's protest because we found that the Navy had conducted its procurement in a manner which favored ISA and which resulted in a sole source award to ISA. We found, however, the Navy was not required to exclude ISA from competing for award under the RFP. Accordingly, we recommended that the Navy issue a new solicitation permitting all of the known potential sources a reasonable opportunity to compete and if an offeror other than ISA was selected for award, that the Navy terminate ISA's contract for the convenience of the government. We also recommended that the agency review the personnel qualifications under the RFP to ensure that the qualifications did not improperly favor ISA and only reflected the agency's minimum needs. In addition, we found Data Based entitled to the costs of filing and pursuing its protest, including attorneys' fees.

The protester claims a total of \$79,842.64, consisting of \$64,750.72 for its costs of pursuing its protest and \$15,091.92 for proposal preparation costs. The Navy and Data Based engaged in protracted discussions regarding the amount of costs to which Data Based is entitled, and Data Based provided the Navy with various documents requested by the agency. Because the parties have been unable to reach an agreement concerning the amount of Data Based's claim, Data Based has requested that we determine the amount of its entitlement pursuant to our Bid Protest Regulations, 4 C.F.R. 21.6(e) (1989).

ATTORNEYS' FEES

Of the \$64,750.72 claimed for the costs of filing and pursuing the protest, Data Based requests reimbursement of \$55,665.58 for 239 hours of attorneys' time and expenses. These hours were billed in accordance with the fee schedule contained in Data Based's retainer agreement with its attorneys. The hours claimed for all four attorneys are documented by monthly billing statements which identify the services performed, the dates of performance and the performing attorney, and the law partner has certified that the work billed was actually performed.

A protester seeking to recover the costs of pursuing its protest must submit sufficient evidence to support its monetary claim. Introl Corp., 65 Comp. Gen. 429 (1986), 86-1 CPD ¶ 279; Malco Plastics, B-219886.3, Aug. 18, 1986, 86-2 CPD ¶ 193. The amount claimed may be recovered to the

extent that the claim is adequately documented and is shown to be reasonable; a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the pursuit of its protest. Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen. 383 (1989), 89-1 CPB ¶ 374.

The Navy does not question the reasonableness of the attorneys' hourly rates but argues that the gross amount of time incurred by Data Based's attorneys in pursuing the protest is unreasonable. The Navy contends that the protest presented no new or novel questions of law and lacked the kind of legal complexity which would justify the expenditure of 239 hours of attorneys' time. In this regard, the Navy asserts that its attorneys spent less than 40 hours defending the agency in this protest.

We generally accept the number of attorney hours claimed, if properly documented, unless specific hours deemed to be excessive can be identified and a reasonable analysis for their rejection articulated. See Princeton Gamma-Tech, Inc.--Claim for Costs, 68 Comp. Gen. 400 (1989), 89-1 CPD ¶ 401. Simply concluding that the hours are excessive is inadequate. Id. Here, the agency has not identified specific hours which it deems to be excessive, and from our review of the attorneys' bills we find no basis to conclude that the hours expended exceed what normally would be incurred by competent counsel in pursuing the protest. In this regard, we disagree that Data Based's protest was so "simple" that the expenditure of 239 hours of attorney time was unreasonable. Further, the amount of time allegedly spent by the agency's attorneys to defend the protest has no probative significance with regard to the hours claimed by the protester's attorney.

The Navy also argues that the attorney time is insufficiently documented because the bills do not provide sufficient specificity for the agency to object to particular hours. The statements list, by date, the service performed, the performing attorney, a brief description of the services rendered and the hours billed to the protester. The Navy argues that the bill should have been further broken down to identify the time spent on each specific task claimed for a particular day. We do not agree that the attorneys' statements were not specific enough to enable the agency to question hours claimed in pursuit of the protest. The bills provide the amount of detail and explanation

ordinarily found in attorneys' billing statements. See Meridian Corp.--Claim for Bid Protest Costs, B-228468.3, Aug. 22, 1989, 89-2 CPD ¶ 165; Automated Business Sys. & Servs., Inc., GSBCA No. 9047-C (8972-P), Apr. 29, 1988, 88-2 BCA ¶ 20,779, 1988 BPD ¶ 91. There is no basis to require the kind of breakdown by specific issue and task allocation within billable hours which the Navy insists must be provided in order to validate the attorneys' billing.

The Navy further contends that it should not be required to pay attorneys' fees in connection with Data Based's allegations of ISA's conflict of interest and the restrictiveness of the RFP's personnel qualifications. The Navy argues that since we did not sustain Data Based's protest on these issues, the agency should not be responsible for the protest costs that relate to them. In Interface Flooring Sys., Inc.--Claim for Attorneys' Fees, 66 Comp. Gen. 597 (1987), 87-2 CPD ¶ 106, we limited the protester's recovery of protests costs to one of two issues on which it prevailed because the two issues involved were so entirely severable and distinct from each other as to constitute, in effect, two different protests. In so holding, we noted that the situation was different from those protests which raised several grounds of objection to the same award. Id. In the case where a protester prevails on one of a number of related issues under the same award, we have held that allocation of fees between winning and losing issues is unwarranted and attorneys' fees are not limited to time spent on the issue sustained. Princeton Gamma-Tech, Inc.--Claim for Costs, 68 Comp. Gen. 400, supra. Here, we conclude that the issues raised are not so distinct or severable as to constitute different protests, but are intertwined parts of Data Based's objection that ISA, a subcontractor on the prior contract, was improperly favored by the agency with the result that the award to ISA was tantamount to a sole source award. Under these circumstances, we do not believe that Data Based's recovery of protest costs should be limited.

We find that Data Based is entitled to recover \$50,282.50 for its attorneys' fees. In so determining, we allow Data Based all of its attorneys' hours incurred through December 31, 1989. We have disallowed the 12.5 hours of attorney time incurred after the date of our decision because these hours were not incurred in the pursuit of the protest.

Data Based also seeks recovery of \$2,870.58 for its attorneys' out-of-pocket expenses for telecopies, photocopies, messengers and delivery services, taxi fare,

postage, telephone charges, lexis research and entertainment. We disallow all but \$90 of these expenses because Data Based failed to provide any evidence to show for what purposes these expenses were incurred or how they relate to the protest. The \$90 we have allowed consists of \$76 for messenger services for filing of protest documents with our Office and \$14 for taxi fare to our Office for a conference and to file the protester's comments. The burden is on the protester to submit sufficient evidence to support its claim, and the burden is not met by unsupported statements that the costs have been incurred. Hydro Research Science, Inc.--Claim for Costs, B-228501.3, June 19, 1989, 66 Comp. Gen. ___, 89-1 CPD ¶ 572.

Accordingly, we find that Data Based is entitled to recover \$50,372.50 for its attorneys' fees and expenses.

COST OF FILING AND PURSUING PROTEST

Data Based claims an additional \$11,956.22 for the costs of pursuing its protest, which consists of \$10,520.77 for the salary of its president and \$1,435.45 for its out-of-pocket expenses. Data Based calculated that its president spent 133.75 hours in pursuing its protest. In support of its claim, Data Based has provided us with a document which lists by date a brief description of the work performed by the president and the amount of time spent.

The Navy does not question the president's hourly rate but argues that the number of hours claimed is unreasonable. The Navy also complains that Data Based has not furnished contemporaneous evidence of the president's time. Data Based states that the president does not keep a contemporaneous record of his hours, and that the document submitted to us is a reconstruction of the hours that its president spent pursuing the protest. There is no requirement that a protester produce contemporaneous records to establish its entitlement to the award of costs, and we conclude that the evidence provided by the protester is sufficiently precise to determine the reasonableness of the hours claimed for its president. See NCR Comten, Inc., GSBICA No. 8229, Feb. 10, 1986, 86-2 BCA ¶ 18,822 at 94,851. The Navy argues that the president's record of his time spent in pursuing the protest appears to be a mere extraction of the attorneys' billing statements. However, we find it reasonable that for every attorney charge for a meeting or telephone conversation with Data Based's president, the president would show a corresponding entry for his time spent on this protest. Thus, the fact that the president's record of his time appears to mirror the attorneys' billing statements corroborates the documentation submitted by Data Based.

We conclude that Data Based is entitled to be reimbursed for 114.55 hours of the 133.75 hours it claims for its president's time in assisting its lawyers in the pursuit of the protest. In reviewing the president's time, we allowed those hours which were substantiated by its attorneys' billing statements and appeared reasonable. We disallowed 19.2 hours, consisting of 13.2 hours of time for conferences and telephone calls with Data Based's attorneys where the claimed hours were not substantiated by the attorneys' billing statements, and 6 hours that Data Based claimed for an employee staff meeting to discuss protest strategy, that occurred after the filing of the protest, since this time appeared to duplicate the services rendered by its counsel. Accordingly, we find that Data Based has sufficiently documented and shown to be reasonable \$9,010.50 of its president's time.

Data Based also has requested reimbursement for \$1,435.45 in out-of-pocket expenses its president incurred in pursuing the protest. These expenses consist of \$927 for airline tickets for flights the president took to participate in the protest conference and to confer with Data Based's attorneys, \$40.45 for telecopies Data Based made to its attorneys to comment on proposed protest submissions and \$468 for a charge identified as per diem. We find that Data Based is entitled to recover \$937.45 for the expenses of the airline tickets and for the telecopies as they clearly relate to the pursuit of the protest and therefore are allowable. We disallow Data Based's claim for \$468 for its president's per diem expenses because Data Based has not explained these expenses or shown how they relate to the pursuit of its protest.

Accordingly, we determine that Data Based is entitled to recover \$9,977.95 for the costs of its president in pursuing its protest.

PROPOSAL PREPARATION COSTS

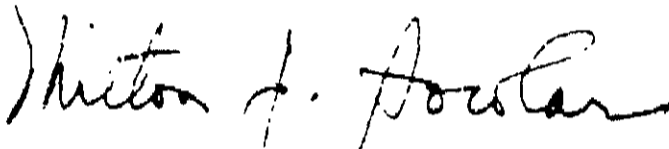
Data Based also requests reimbursement of \$15,091.92 for 349.55 hours of Data Based employee time that Data Based claims for its proposal preparation. The Navy objects to the reimbursement of these costs on the basis that we did not award Data Based its proposal preparation costs in our decision. Data Based responds that the preparation and submission of its proposal was a necessary part of its protest effort and was required to preserve its position as a participant in the procurement.

Since we did not award Data Based its costs of proposal preparation and Data Based did not timely request that we

reconsider our award of costs, we find no basis for the reimbursement of Data Based's proposal preparation costs. We also find no basis for Data Based's presumption that it was required to submit a proposal to preserve its right to protest the restrictive nature of the Navy's procurement. Furthermore, we question how Data Based could incur more than 300 hours of employee time in proposal preparation when Data Based explicitly stated in its protest submissions that Data Based's proposal was essentially another company's winning proposal from 1987, updated by Data Based merely to include the new job positions of the solicitation. Accordingly, we find that Data Based is not entitled to recover any of the costs it claims for proposal preparation.

CONCLUSION

Based on the foregoing, we determine that Data Based is entitled to recover total costs of \$60,350.45, consisting of \$50,371.50 for its attorneys' fees and \$9,977.95 for its other costs of filing and pursuing the protest.



Acting Comptroller General
of the United States